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Charles Earl of Peterborow,
Harry Mordaunt Esq;
and Others,

} Appellants.

Sir John Germaine, and
the Lady Elizabeth
his Wife,

} Respondents.

THE Appellants CASE.

THAT John Earl of Peterborow having married Elizabeth, Daughter and Heiress of the Lord Howard of Effingham, and having by Her two Sons, Henry late Earl of Peterborow, and John Lord Viscount Mordaunt; the Appellant's Father did, for the support of the Honour of the Family, and preserving his Estate in his Name,

14 Car. I.

By Indenture, convey the Mansion House of Drayton, the ancient Seat of the Family, and several Lands in the County of Northampton, to Francis Earl of Bedford and Sir Henry Compton, to the use of Countess Elizabeth his Wife, for Her Life, for Her Joynture Remainder to himself for Life, with Remainder to Henry late Earl of Peterborow in Tail Male, with Remainder to John Lord Viscount Mordaunt in Tail Male, with other Remainders in Tail Male, with Remainder in Fee to Earl John, which Deed was voluntary, and always kept in his own Custody, and there was no Counterpart thereof. And afterwards, the better to secure the said Estate in his Name, and to the Heir Male of the Family did

July, 3d and 4th.

16 Car. I.

By Lease and Release convey the said Estate to the said Earl of Bedford, Oliver St. John, Esq; and other Trustees and their Heirs, to the use of the said Countess Elizabeth, for Her Life, for Her Joynture with Remainder to himself for Life, Remainder to Earl Henry for Life, Remainder to his Sons in Tail Male, Remainder to John Lord Viscount Mordaunt for Life, remainder to his Sons in Tail Male, with other Remainders over, with Remainders in Fee to Earl John.

In both which Settlements, there was the like Power for the Countess Elizabeth to make Leases for three Lives, reserving two Thirds of the yearly Value.

1643.

Earl John Dying, Earl Henry acted under the last Settlements (of which he had one part) for above twenty eight Years.

Feb. 15th. 1667.

Earl Henry, to prevent the yearly Rents of the Estate being lessened, entered into Articles with Countess Elizabeth his Mother, that she should by making Leases raise 2000*l.* which should be equally divided between them. And that after the same was raised, she should not Lease any part of the said Lands during Earl Henry's Life, but with his Advice and Consent, and at the improved yearly Value; and that he should have the Refusal thereof at the improved Rent.

Oct. 28th. 23 Car. II.

Earl Henry brought a Bill and obtained a Decree, that the said Articles should be Confirmed, and that all Leases which the Countess had made or should make contrary to the said Articles, should be and were thereby set aside.

That one Mr. Cocks (being of Council with the Countess) about twenty six Years after Earl John's Death, upon Occasion of some Disputes which were then likely to arise, pretended to the Countess he might do Her great Service, by looking over the Deeds and Writings, which she permitting him to do: He finding amongst them, the Deed of the 14 Car. 1*mi.* uncanceled, made his application to Earl Henry to know what his Lordship would give him, to make his Lordship Tenant in Tail of the Lands in Question. Whereupon it was agreed, Cocks should have 1000*l.* paid down, and another 1000*l.* secured, which still remains

a charge upon other part of the said Earl's Estate: By which means Earl *Henry* coming to the knowledge of the Deed of the 14 *Car. 1^{mi.}* whereby he was Tenant in Tail. And the Countess understanding, that he intended to set up that Deed, (which was believed to be made void by the subsequent Deed,) and by Fines and Recoveries to dock the Intail, did by the Advice of most eminent Council (not to lessen the Rent of the said Estate,) but to prevent Earl *Henry's* suffering Recoveries, and to preserve the said ancient Seat and Estate in the Name and Family, according to the Power reserved to Her by both Deeds, about the

Nov. 1st. 1671.

Make fifteen Leases to *Andrew Newport*, Esq; (since deceased) and his Heirs, of the said Mansion House and Parks, and about 300 *l. per Ann.* part of Her Joyn-ture, (which was about 4000 *l. per Ann.*) for the Lives of Earl *Henry*, the now Appellants Earl *Charles*, and *Harry Mordaunt*, and soon after dyed, and made *Anthony Bowyer*, Esq; Her Executor in trust, for *John Lord Viscount Mordaunt*, and his Heirs: Whereupon Earl *Henry* brought his Bill of Revivor against Mr. *Bowyer*, and the said Viscount, and

Octob. 28th. 1674.

Obtained an Order, that Mr. *Bowyer* should bring before a Master of the Court, the Deeds and Writings which were in his Hands, as Executor to the Countess; but not such as were in his Hands, as Council for the Viscount. And to that end he was to distinguish by his Oath, what came to his Hands as Executor to the Countess, and what was delivered to him by Order of the Viscount. And Oath was made accordingly, that the fifteen Leases in Question, were delivered to him by the Order of the Viscount: But the said Viscount having not then answered, and Mr. *Bowyer* being in contempt for not bringing in the Deeds and Writings,

March 3^d 1674.

The Earl obtained an Order, that Mr. *Bowyer* should bring the said fifteen Leases upon Oath, before Sir *John Coel* a Master of the Court, who was, in the presence of both Parties, to Seal them up, and send them to the Usher of the Court, who was to keep the same till further Order. Which Order was not obeyed; for it does not appear that the Leases were brought before Sir *John Coel*, or that they were transmitted to the Usher of the Court, nor kept in the Hands of any Officer of the Court; so that the same did lately come to the Hands of the Appellant the Earl, and he hoped he might have been permitted to keep them, and to make use of them, as there should be Occasion: And that they should not have been taken out of his Hands by the Court of *Chancery*, which was never possessed of them. And the rather for that the Appellant the Earl, who is now both Heir General, and Heir Male of the Family, was no Party to that Cause in which the said Order was made for bringing the said Leases into Court: And for that the Cause was long since abated by the Deaths of Earl *Henry*, and the Lord Viscount *Mordaunt*, and hath not been revived.

April 21st. 1708.

That yet notwithstanding, the Court of *Chancery* was then pleased upon the Motion of the Respondent, Sir *John Germaine*, (who was neither Party nor Privy to that Suit,) to order that the Appellant the Earl should bring the said Leases before a Master, to be by him delivered to the Usher of the Court, there to be kept for safe Custody, till further Order of that Court, where the same were brought, and do still remain. And the Appellants conceiving those Leases were made for their Benefit, and to preserve the Settlements of the Family from being destroy'd; and the said ancient Seat of the Family and Premises from being alienated; Did in

Hillary Term, 1708.

Exhibit their Bill against the Respondents, and the said *Anthony Bowyer* and the now Earl of *Bradford*, the Heir of the said Mr. *Newport*, to make use of his Name for the Recovery of the Premises: And that the said Leases might be preserved for their Benefit, and they have Liberty to make use of them for the Justification and Defence of their Title upon any Tryal at Law.

To which Bill the Respondents put in a Plea and Answer: And by their Plea insisted on several Fines and Recoveries Levied and Suffered, and Feoffments made by Earl *Henry*, and other Settlements made by and on his Daughter, the Lady *Mary Mordaunt*, and an Act of Parliament for the Sale of the Manor of *Blechingley*, and the aforesaid Decree made touching Countess *Elizabeth's*

zabeth's Power of Leasing, and also the Dismission of the Appellant, the now Earl's former Bill in Chancery, and the Affirmation thereof in this Honourable House.

Nov. 18th. 1709.

The Court thought fit, upon arguing the said Plea, to allow it : From which Order for bringing the said Leases into Court by the now Earl, and for allowing the said Plea, the Appellants have Appealed to this Honourable House, and humbly hope, that they shall have the said Leases restored to the Possession of the said Appellant Earl *Charles* ; or to be produced, as there shall be occasion, upon any Tryal or Tryals at Law for the Premises contained in the said Leases, they being made purely to preserve the Estate therein contained, in the said Family. For that the Rents and Profits of the said Estate, received by the Lady *Mary Mordaunt*, being sufficient to discharge all the Mortgages and Incumbrances that were upon the said Estate ; or at least the other part of the said Estate, being above 800 *l. per Annum*, is sufficient to pay the same thrice over, if any still remain unpaid : And the rather, for that none of the said Leases having as yet been suffered to be read, it has not yet come before the Court Judicially to determine whether the said Leases, or any of them, were made in Breach of the said Articles or Decree, which only restrained the Countess from making Leases to lessen the Rent of the Estate, and not to hinder her from making Leases to preserve the Estate in the Name and Family ; and for that the End of the Appellant the Earl's Bill, which was formerly dismissed, was to have the Deed of the 14th *Car. primi* set aside as a voluntary Deed, and the Deed of the 16th established, which is a Matter quite different from the Relief Pray'd by this Bill ; nor were any of the other Plaintiffs, the Appellants, Parties to that Suit : And therefore that Dismission ought not to be a Barr to the Relief sought by this Bill. And therefore the Appellants humbly hope, that Leases which were never read in Court, or the Contents thereof known, but were taken from the now Earl, upon a presumption that they were once in Court, shall not be kept for ever from the Appellants, it having been never Judicially determined whether the said Leases were made in Violation of the said Articles or Decree, and contrary to the true Intent and Meaning of the said Earl *Henry* and his Mother ; which seems to be quite otherwise since the Leases were made for the Purposes aforesaid, and Earl *Henry* did not know of the Deed of the 14th, when the Articles were entered into, or that he had Power to dock the Intails thereby created, and consequently could not have that Matter in view, when those Articles were made. And it cannot be in the least doubted, but Earl *Henry* (if alive) would have been very much grieved to have seen the ancient Seat, that had been above Three Hundred Years in the Family, to have gone from the Appellants to the Respondent Sir *John Germaine*. And tho' the now Earl's former Bill was dismissed, as to the Relief in Equity thereby sought, yet the now Earl was left at liberty to proceed at Law. And accordingly he did deliver Declarations in Ejectment to the Tenants in possession of the Premises in Question, and had proceeded to Tryal thereon, but that the Leases which were to be given in Evidence upon the Tryal at Law, the now Earl was compell'd to bring into Chancery ; and there they are sealed up, and not permitted to be produced at any Tryal at Law : By which means the Appellants humbly conceive they are deprived of making their Just and Legal Defence, and debarr'd of a great part of their Evidence.

For which Reasons, the Appellants humbly hope, this Honourable House will give them such Relief as shall be agreeable to Justice.

T. Parker.
Sim. Harcourt.
t.

Earl *Peterborough* } Appellants.
and Others, }

Sir *John Germaine* } Respondents.
and his Lady, }

THE
APPELLANTS
CASE.

To be Heard at the House of Lords, on
Monday the 20th of February 1709.